

Dr. Y.S. Chen Vs. Batulbai

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Court : Madhya Pradesh

Decided On : Jul-23-1990

Reported in : AIR1991MP90; 1993(0)MPLJ320

Judge : S.D. Jha, J.

Acts : Madhya Pradesh Accommodation Control Act, 1961 - Sections 2 and 12(1);
Muslim Law

Appeal No. : Second Appeal No. 417 of 1984

Appellant : Dr. Y.S. Chen

Respondent : Batulbai

Advocate for Def. : R.C. Waghmare, Adv.

Advocate for Pet/Ap. : S.R. Joshi, Adv.

Disposition : Appeal dismissed

Judgement :

S.D. Jha, J.

1. The second appeal by tenant-defendant by order dated 23-1-1985 was admitted for final hearing on the following substantial question of law:

'1. Whether on the facts and in the circumstances of the case, plaintiffs sister's sons could be held to be members of the family, for whose requirement decree for eviction on the ground specified in Section 12(1)(e) of the M. P. Accommodation Control Act, 1961, could be passed?

2. Whether on the facts and in the circumstances of the case, the Court below has erred in holding that the plaintiff had become owner of the suit accommodation?'

2. The respondent-plaintiff filed suit for eviction against the defendant-tenant claiming that she had become owner of groundfloor of House No. 390 Bohra Oli, Neemuch Cant consisting of four rooms, toilet and bathroom by virtue of gift made in her favour by her mother Hussainabi on 25-8-1976. Being a Mahommedan she was governed by the Mahommedan Law in the matter of gift also. The defendant was informed of this gift by the plaintiff and her mother by letters dated 24-10-78 and 25-10-78. The plaintiff claimed eviction of the defendant on ground of arrears of rent, nuisance by keeping a ferocious dog and bona fide requirement for residence for herself and two nephews, sons of her sister dependent on her. It was also claimed that plaintiff had been residing with her brother and she bona fide required the two rooms, toilet and bath room let out to the defendant. The defendant resisted the suit contending that plaintiff was not the owner of the suit accommodation; she did not bona fide require the same for her residence, nephews were not the members of her family within the meaning of Section 2(a) of the Act. He also denied nuisance. The trial Court, Civil Judge Class II, Neemuch, by judgment and decree dated 11-4-1983 inter alia held that plaintiff bona fide required the suit accommodation for her residence but he also held that need of two nephews could not be considered for judging plaintiff's bona fide need as they were not members of the family within the meaning of definition set out in Section 2(e) of the Act. Other grounds of nuisance and arrears of rent were held not made out. In appeal by the tenant-defendant the first appellate Court, Additional Judge to the Court of District Judge, Mandsaur, at Neemuch, by judgment and decree 29-9-84 upheld the finding of the trial Court as to plaintiff's bona fide requirement in respect of the suit accommodation. He further held that the need of the two nephews dependent on plaintiff had also to be taken into consideration for judging her bona fide need in respect of the suit accommodation. He dismissed the

appeal.

3. At the hearing of the appeal Shri S.R. Joshi, learned Senior Advocate, representing the appellant submitted that the available material on record did not lead to inference that plaintiff-respondent's mother had made a valid gift under Mahommedan Law. Shri Joshi during arguments submitted that essential of valid gift under Mahommedan Law consisted in declaration, acceptance and delivery of possession. He submitted that while gift was allegedly made on 25-8-1976 notice of the same was given two years and four months after to the defendant-appellant on 24-10-1978. He further submitted that the alleged gift property consisted of an undivided share in a house and gift could not be said to be valid. In that connection Shri Joshi referred to relevant provisions in Mulla's Mohommedan Law, which would be referred to later. Relying on Pradyumna Kumar Mullick v. Kumar Dinendra Mullick, AIR 1937 PC 256 Shri Joshi argued that as the plaintiff-respondent claims derivative title in respect of the suit accommodation, the defendant-appellant was not estopped from challenging her title of ownership over the suit accommodation. Shri Joshi contended that plaintiff was not proved to be owner of the suit accommodation and the suit by her on ground under Section 12(1)(e) in absence of her ownership was not maintainable. He further submitted that the two nephews, sister's sons, could not be said to be members of the plaintiff's family within the meaning of definition of 'family' in Section 2(e) and their need could not be taken into consideration in judging plaintiffs requirement in respect of the suit accommodation. For the argument Shri Joshi relied on Hiranand v. Srikrishna Taval, 1979 Jab LJ (Note) 62 and Lalta Prasad v. Ramcharan, 1986 Jab LJ 713. Shri Joshi also submitted that having regard to misery due to scarcity of accommodation humanist approach in such matter should be adopted and for this he relied on Jayram Ranchhoddas Thakkar v. Tulshiram Ratanchand Mantri, AIR 1977 SC 1357. Relying on Ramswarup v. Prem Narain Verma, 1973 MPLJ 505, Shri Joshi argued that the landlord has to satisfy the Court objectively that requirement is bona fide; it is not merely plaintiffs word that will be decisive. The plaintiff is not the sole arbiter. It is not bona fide of the landlord but bona fide of the claim which must be established. That, Shri Joshi submitted, was lacking in the case. He argued that the appeal should be allowed and the suit dismissed.

4. Shri Waghmare argued that as the defendant had after gift of suit accommodation to plaintiff by her mother paid rent to plaintiff till 31-3-1979 and recognized her as his landlady. The defendant did not pay rent from 1-4-1979 onwards till 31-8-79 whereas the suit was filed on 10-12-1979. The defendant after execution of gift deed in plaintiff's favour having recognised her as his landlady could not on the plea of derivative title question the gift in plaintiff's favour by her mother. Even otherwise defendant who was stranger to the gift Court cannot question the validity of gift. The plaintiff for succeeding under Section 12(e) had not to prove her title or ownership in respect of the suit accommodation as one would do in a suit for title. It would suffice if she is able to show that she is one who has a right against the whole world or to occupy the building herself and exclude any one holding a title lesser than her. For this argument Shri Waghmare relied on *M.M. Quasim v. Manohar Lal Sharma*, AIR 1981 SC 1113; *Ramchandra v. Gopaldas*, 1985 MPRCJ 106 proceeding further Shri Waghmare submitted that gift of suit accommodation in plaintiffs favour by her mother was perfectly valid. Shri Waghmare argued that plaintiff is an old lady and a divorcee living all alone and considering this fact her two nephews would be members of her family. For this argument he relied on *S.R. and Brothers v. Smt. Tarabai B. Muley*, 1989 MPRCJ 9 and *Govind Dass v. Kuldip Singh*, AIR 1971 Delhi 151. He further submitted that even if plaintiff's nephews be excluded as members of her family in judging plaintiff's bona fide requirement, in spite of such exclusion, plaintiffs bona fide need for the suit accommodation would persist. The concurrent finding on this Court of two Courts below could not be interfered in second appeal.

5. On record there is an application for amendment I.A. No. 110/89 presented on 4-1-1989. By order dated 9-1-1989 it was directed that this application would be considered at the time of final hearing. By this application it was submitted by the appellant that during the pendency of the appeal plaintiff has constructed two rooms on first floor of the house of which suit accommodation forms a part and her need in respect of the accommodation does not exist. The application was opposed by plaintiff-respondent and an affidavit was filed to show that construction belonged not to plaintiff but her sister Jarina. No arguments as to this application were advanced during the argument and the same is, therefore, being ignored.

6. Taking up the first question, Section 2(e) of the Act defines 'members of the family' as set out below:

2(e) ' 'Member of the family' in case of any person means the spouse, son, unmarried daughter, father, grandfather, mother, grandmother, brother, unmarried sister, paternal uncles, paternal uncle's wife or widow, or brother's son or unmarried daughter living jointly with or any other relation dependant on him.'

The plaintiffs sister's sons would not be covered within the relations includible in definition of 'members of the family' in first part of the definition. It is not shown that the two nephews are dependent on the plaintiff in any way. They would therefore not be covered within the expression any other relation de-pendent on him. In *Hiranand v. Srikirshna Taval* (1979 Jab LJ (NOC) 62) (supra) sister's son was held not to be a member of the plaintiffs family. *Shri Waghmare* relied on *S. R. and Brothers v. Smt. Tara Bai B. Muley* ((1989) MPRCJ 9) (supra) for the, argument that the two nephews be held to be members of the family is not acceptable because the decision was given on its peculiar facts; landlady was cardiac patient and her married daughter was living with her for looking after her. On facts the decision is distinguishable. The other decision in *Govind Dass v. Kuldipsingh* (AIR 1971 Delhi 151) (supra) was given with reference to Delhi Rent Control Act and from para 9 of the judgment it is seen that unlike the M.P. Act. The Delhi Act has no definition of the word 'Family'. It may not be prudent to apply the observations made in the decision in the present appeal.

7. The finding as to nephews not being members of plaintiff's family would not affect the bona fide requirement of the plaintiff. The trial Court as already stated above had decreed eviction finding bona fide requirement in respect of the accommodation of plaintiff alone proved. The first appellate Court found not only bona fide requirement of the plaintiff in respect of the suit accommodation proved but further held that in judging her need the nephews would also have to be included as members of her family. It would be seen that there is concurrent finding of two Courts below regarding plaintiff's bona fide need in respect of the suit accommodation. The two rooms vacant in the suit accommodation do not have elementary facilities like toilet and bathroom and plaintiff is a 'Pardanashin'

lady. Considering this, even after excluding the nephews bona fide requirement of the plaintiff in respect of the suit accommodation would persist. It may also be stated that the substantial questions framed as set out above does not touch the bona fide need of plaintiff herself in respect of the accommodation even otherwise it is a question of fact.

8. Taking up the next question, according to Mulla's Mahomedan Law revised by M. Hidayatullah 18th Edition (Tripathi) three essentials of the gift are; (1) a declaration of gift by the donor; (2) an acceptance of the gift, express or implied, by or on behalf of the donee, and (3) delivery of possession of the subject of the gift by the donor to the donee. About the first two essentials there is no dispute that they have been complied with. The defendant-appellant contested the third essential. Now, after gift was made in plaintiff's favour by her mother, the defendant paid rent to plaintiff and recognized her as his landlord (landlady). It is, therefore, not open to him to question the validity of the gift. According to Mahomedan Law (ibid) page 160'. The question whether possession has been delivered is relevant only when an issue is raised between the donor or those claiming under him on one side, and the donee or those claiming under him on the other. A stranger cannot invoke the rule that the gift is bad because there has been delivery of possession'. A gift of an undivided share in property which is capable of division is irregular (fasid) but not void (batil). Besides, as already observed above objection as to invalidity of the gift cannot be raised by the defendant-appellant. Apart from the above in Ramchandra v. Gopaldas (1985 MPRCJ 106) (supra) relying on Jiban Roy v. Smt. Taramoyee Devi, AIR 1979 Cal 339 ownership was interpreted as under:

'Ownership consists of a bundle of rights, it may be limited or full. For the various incidents of ownership the decision in Jibanroy Choudhary's case, may usefully be perused. One of the main incidents of ownership is right to possess the thing. It is residuary in character and when the lesser rights are given away their extinction revives all rights in the owner. The simultaneous existence of all the incidents of ownership is not imperative to constitute ownership of a property.'

In *M.M. Quasim v. Manohar Lal Sharma* (AIR 1981 SC 1113) (supra) dealing with Section 11(1)(c) of Bihar Buildings (Lease, Rent and Eviction) Control Act is some what parallel provision to the M. P. Act Provision in Section 12(1)(e), the Supreme Court observed as under (at p. 1118 of AIR):

'This becomes manifestly clear from the explanation appended to the sub-section. By restricting the meaning of expression landlord for the purpose of Section 11(1)(c), the legislature manifested its intention namely that that landlord alone can seek eviction on the ground of his personal requirement if he is one who has a right against the whole world to occupy the building himself and exclude any one holding a title lesser than his own. Such landlord who is an owner and who would have a right to occupy the building in his own right, can seek possession for his own use.'

Taking the above into consideration, plaintiff would be owner of the building because she has a right to occupy the same in her own right. She has a right against the whole world to occupy building herself and exclude any one holding a title lesser than her. She is owner of the suit accommodation within the meaning of Section 12(1)(c) of the Act.

9. Other decisions *Jivram Ranchhoddas Thakkar v. Tulshiram Ratanchand Mantri* (AIR 1977 SC 1357) (supra) and *Ramswarup v. Prem Narain Verma* (1973 MPLJ 505) (supra) in view of the substantial question formulated in the appeal are not directly relevant for the decision in the appeal.

10. Finding no force in the appeal it is dismissed. The appellant shall bear his own costs and bear of the respondent. Pleader's fees according to schedule or certificate whichever is less. The appellant is, however, granted two months time to vacate the premises and hand over possession of the same to the plaintiff.